XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(29)

मामला क्रमांक M.A.(C)367/ सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT/: (Non-applicant No.2)	Ved Ram Sahu, S/o Jagsao Sahu, Aged about 60 years, R/o Village- Kewatadih Tangar, Post- Bharari, Police Chowki- Pachpedi, Thana- Masturi, Distt.- Bilaspur (C.G.) Owner of Tractor No.CG10A-1130, Tractor trolley No.CG10A-1131.
		- Versus -
	RESPONDENTS/: (Claimants)	1. Umashankar Bani (Satnami), S/o Late Ravilal Satnami, Aged about 50 years.
		2. Smt. Ansuiya Bani, Aged about 45 years, W/o Umashankar Bani (Satnami).
		3. Ku. Gayatri, Aged about 6 years, D/o Santosh Satnami, Through- Guardian Umashankar Bani [Nana (maternal grandfather)].
		4. Ku. Preeti Bai, D/o Santosh Satnami Through- Guardian Umashankar Bani [Nana (maternal grandfather)], Aged about 4 years. All are R/o Village & Post Risadaa, Tahsil- Masturi, Thana- Masturi, Distt.- Bilaspur (C.G.)
	(Non-applicant No.1)	5. Shashi Kumar Sahu, S/o Ved Ram Sahu, Aged about 23 years, Driver of Tractor No.CG10A-1130, Tractor trolley No.CG10A-1131, R/o Village- Kewatadih Tangar,

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Post- Bharari, Police Chowki- Pachpedi, Thana- Masturi, Distt.- Bilaspur (C.G.)

(Non-applicant No.3) 6. New India Insurance Company, Rajendra Nagar Chowk, Link Road, Bilaspur Branch, Bilaspur (C.G)

(Miscellaneous appeal under Section 173 of the Motor Vehicles Act 1988)

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

24-8-2007

Mr. C.K. Kesharwani, counsel for the appellant.

Mr. Om Prakash Sahu, counsel for respondents No.1 to 4.

Mr. Saurabh Sharma, counsel for respondent No.6.

Heard learned counsel for the parties for final disposal of this appeal.

L.C. Bhadoo, J: -

Appellant Ved Ram Sahu, owner of the tractor, has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, being aggrieved by the award dated 16-11-2006 passed by the 1st Additional Motor Accidents Claims Tribunal, Bilaspur in Claim Case No.226/2006, whereby learned Tribunal after holding the owner of the tractor, the appellant herein, responsible for payment of compensation, awarded compensation amount to the tune of Rs.3,34,000/- along with interest at the rate of 6% per annum with effect from 3-3-2005 i.e. the date of filing of the claim petition.

In para 8 of the award, the Tribunal has held that the tractor in question was insured for agricultural purposes with non-applicant No.3 New

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India Assurance Company, whereas at the time of accident, the tractor in question was carrying passengers for election campaign for which the tractor was not insured, therefore, there was a breach of policy, as such, the owner of the tractor is responsible for payment of the compensation amount.

Learned counsel for the appellant - owner argued that in this case there is no evidence on record to establish that the tractor in question was being used for election campaign at the time of accident, without any evidence and basis, learned Tribunal has arrived at a wrong conclusion that the tractor in question was being used for election campaign, and the deceased was travelling along with other persons in the tractor for election campaign. Therefore, the finding of the Tribunal is perverse.

On the other hand, learned counsel appearing for the Insurance Company argued that the document available on record i.e. F.I.R. Ex.P-1, inquest Ex.P-2 & merg intimation Ex.P-3 specifically mention that the tractor in question was being used in election campaign at the time of accident. He placed reliance on the judgment of the Apex Court in the matter of **Oriental Insurance Co. Ltd. v. Premlata Shukla & Ors.** reported in **2007 AIR SCW 3591**.

Having heard learned counsel for the parties, we have perused the record. In this case, no eyewitness to the accident has been examined by any party to the matter. Even driver & owner, the appellant herein, have rescued themselves from adducing evidence. Even the Insurance Company has not adduced any evidence by producing any eyewitness to the incident.

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The claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988. In second part of para 16 of the claim petition, it has been mentioned that on the date of incident i.e. 19-1-2005, the deceased was travelling in the tractor & trolley of the appellant herein, he was travelling for election campaign of Kaushik Kumar Khande, the tractor was going for election campaign to Sumoli which was being driven by non-applicant No.1 Shashi Kumar Sahu, the tractor was being driven in rash & negligent manner and met with accident near Dhaurabhata turn, in that accident, Atmaram & others sustained injuries, Atmaram was taken to Masturi hospital by the driver, but he was declared brought dead. Even though the appellant herein in his reply has denied that the tractor in question was being used in election campaign at the time of accident, the Insurance Company – non-applicant No.3 has submitted reply to the effect that 'yes' the tractor was being used for election campaign.

As has been mentioned earlier, no eyewitness to the accident has been examined by either of the parties, therefore, the Court has to decide the point based on the documents available on record. In the first instance, as has been mentioned earlier, the claimants themselves have mentioned in second part of para 16 of the claim petition that the tractor in question was being used for election campaign at the time of accident in which the deceased was travelling and he also went for election campaign. The first information report (Ex.P-1) was lodged by one Ramakant ~~who~~ has also mentioned in the said F.I.R. that at the time of accident, the tractor in question was going for election campaign. In Ex.P-3 merg case diary prepared on the information given by Ramakant it has been mentioned that

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on 19-1-2005 Ved Ram Sahu's tractor was going to Village: Sumoli for election campaign of the of the member of B.D.C. and the tractor in question met with accident.

In the matter of **Oriental Insurance** (supra) also an objection was raised about the admissibility of documents that the documents of the police case diary especially the F.I.R. is not admissible in evidence, the documents would not be held to be proved unless the contents are proved. But at the time of tendering the documents into evidence and marking them as exhibits if no objection was raised by the parties, then they cannot be permitted to turn around and raise contention that the contents of the documents have not been proved. Negativing the above documents, the Apex Court held that "it is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure followed in the matter of giving evidence in Court was not correct. When the parties themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not open to them to urge later either in the same Court or in a court of appeal that the evidence produced was inadmissible".

Applying the same principle laid down by the Apex Court in the above matter, if we scrutinize the material on record in the Tribunal's file, F.I.R. Ex. P-1 was tendered into evidence and exhibited as Ex.P-1 and that was not objected by the owner. In the F.I.R. as well as in the merg case diary report Ex.P-3 which was also exhibited and no objection was raised by the owner's counsel, in both these documents it has been mentioned by the informant that the tractor in question was being used for carrying the persons involved in the election campaign when the tractor in question met with accident.

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	Moreover, the claimants themselves have mentioned in the claim petition that at the time of accident, the tractor in question was being used for election campaign. In order to refute the above contentions raised by the Insurance Company or the claimants, neither the driver has ~~not~~ appeared in the witness box nor the owner entered into evidence. Therefore, we are of the considered opinion that the finding of the Tribunal that there was a breach of policy i.e. the tractor in question was insured for agricultural purposes, whereas the same was being used for carrying the persons in election campaign at the time of incident, is not perverse and based on legal sound reasonings. In the result, we do not find any merit in this appeal, same is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge** Soma	**Sd/-** **Sunil Kumar Sinha** **Judge**